



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,996	07/23/2001	Roger Le Comte	01121	1416

7590 11/28/2003

DENNISON, SCHEINER, SCHULTZ & WAKEMAN  
Suite 612  
1745 Jefferson Davis Highway  
Arlington, VA 22202

EXAMINER
----------

GORDON, BRIAN R

ART UNIT	PAPER NUMBER
----------	--------------

1743

DATE MAILED: 11/28/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/909,996

Applicant(s)

COMTE ET AL.

Examiner

Brian R. Gordon

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 3-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

1. The abstract of the disclosure is objected to because the last sentence is unclear "Application to hematological analysers." The "(Figure1)" text should be deleted.

Correction is required. See MPEP § 608.01(b).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.

- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The required headings are missing.

### ***Claim Objections***

2. Claims 3-15 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 3-15 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

The claims are not drafted in a conventional format in which the claim comprises a preamble, transitional phrase, and body.

It is unclear where the preamble ends, as such it is unclear what elements applicant considers as elements of the invention for the purpose of examination the examiner has interpreted the claim as follows:

A device for processing samples of blood products contained in a plurality of tubes, the device comprising a plurality of tubes closed by means of bungs; a plurality of cassettes holding and transporting said plurality of tubes; means for agitating said tubes; means for sampling capable of collecting at least one sample from at least one of tubes after agitation; means for transferring said cassettes, wherein said means is configured to move the cassettes individually on a pre-determined path; wherein said means for agitating said tubes further comprises at least one pick-up mechanism configured to pick up at least one selected tube from at least one of said plurality of cassettes to agitate the selected tube and to replace said selected tube in said at least one cassette; and said sampling means further comprising at least one needled configured to draw a given sample quantity from said at least one agitated tube replaced in said at least one cassette.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1743

6. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Otani US 4,921,676.

Otani discloses a shaking apparatus for agitating and withdrawing a liquid specimen such as blood confined in a sealed vessel, the apparatus including vessel catching hand whereby the vessel is held under the action of a spring and is shaken so as to effect the agitation of the content, and after agitation is finished the content is withdrawn without opening the vessel through needles stabbed through the plug thereof. The needles are cleansed so as not to spoil the specimen contained in the vessel.

There is provided a rack 12 (cassette) on which vessels 14, 16 and 18 are mounted. The apparatus 10 includes a supporting structure 20 which includes a guide rail 24 for a first slider 22 (carriage) and a support 26. The support 26 includes a guide rail 30 for a second slider 28 (transfer means).

There are holding vessel catching hands (holding elements) 44, 46 and 48, hereinafter referred to merely as hands, which are initially situated as high as the vessels 14, 16 and 18 mounted on the rack 12. As the rack 12 moves, the vessels 14, 16 and 18 are caused to come near the hands 44, 46 and 48. Then the movement of the rack 12 is stopped. At this stage, the base plate 32 is moved forward by the cylinder 38, thereby enabling the hands 44, 46 and 48 to catch the vessels 14, 16 and 18, respectively.

The hands 46 and 48 holding the vessels 16 and 18 are caused to ascend along the guide rail 42 virtually one-third of the height of the hand 44 shown in FIG. 2, and are

Art Unit: 1743

then shaken (agitating means) in the 120 degrees angular range in a plane perpendicular to the axis of the cylinder 54 by means of the cylinder 54. They are repeatedly shaken so as to effect the mixing of the fluids in the vessels 16 and 18. The cylinders 50 and 54 each have rotary shafts 56 and 58 linked to pinions driven by rack gears reciprocally movable, and also have sliders (not shown) movable along the guide rail 42.

The **needles** 88 and 90 are used to stab the plug 84 (bung) through the apertures 92 and 94 until the tips of the needles reach the liquid in the vessel 14. At this stage the movement of the needles is stopped, and air is supplied into the vessel 14 through one of the needles 88 or 90, and the liquid is withdrawn through the other needle 90 or 88.

### ***Conclusion***

7. No claims allowed.

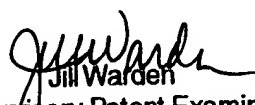
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Boyd et al., Lebl et al., Bach et al., (,727 and ,780), Dales et al., Dobelin, Carey et al., Rao et al., (,360 and ,921), Tajima, Knobel, Wuerschum, Mawhirt et al., Coulter et al., Keller et al., and Netherler et al. disclose sampling and analysis devices. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is (703) 305-0399. The examiner can normally be reached on M-F, with 2nd and 4th F off.

Art Unit: 1743

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

brg

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700